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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re CONNETICS CORP. SECURITIES
LITIGATION

Case No. C 07-02940 SI

This Document Relates To:

ALL ACTIONS.

**JOINT CASE MANAGEMENT
STATEMENT**

Date: October 19, 2007
Time: 2:00 p.m.
Dept.: Courtroom 10, 19th Floor
Judge: Hon. Susan Illston

1 Pursuant to Civil Local Rule 16-9(a) and Federal Rule of Civil Procedure 26(f), counsel
2 for the parties met and conferred telephonically beginning on September 28, 2007, and submit
3 this Joint Case Management Statement in preparation for the October 19, 2007 Case
4 Management Conference.

5 While the parties were able to reach agreement on certain items, others are in dispute.
6 Attached hereto are the parties' respective proposed CMC orders.

7 1. JURISDICTION AND SERVICE

8 The Teachers' Retirement System of Oklahoma (the "Lead Plaintiff") asserts claims
9 arising under §§ 10(b), 20A and 20(a) of the Securities Exchange Act of 1934 (the "Exchange
10 Act"), 15 U.S.C. §§ 78j(b), 78t(a) and 78t-1, and the rules and regulations promulgated
11 thereunder, including SEC Rule 10b-5, 17 C.F.R. § 240.10b-5. This Court has jurisdiction over
12 the subject matter of this action pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa
13 and 28 U.S.C. § 1331, because this is a civil action arising under the laws of the United States.
14 No parties remain to be served.

15 2. FACTS

16 This is a federal securities law class action on behalf of Lead Plaintiff and persons who
17 purchased or acquired the securities of Connetics Corp. (n/k/a Stiefel Laboratories, Inc.
18 ("Connetics" or the "Company") between January 27, 2004 and July 9, 2006 (the "Class
19 Period"), against Connetics, Thomas G. Wiggans, Gregory Vontz, John Higgins, Lincoln
20 Krochmal, Alexander J. Yaroshinsky, and Victor E. Zak.

21 The claims asserted arise under Sections 10(b), 20A and 20(a) of the Exchange Act.
22 Connetics is a specialty pharmaceutical company that develops and markets drugs for the
23 dermatological market. In December 2006, Connetics was acquired by Stiefel Laboratories in a
24 \$640 million merger. The amended consolidated complaint alleges claims related to Velac Gel
25 (a development-stage product), Connetics' financial statements, and stock trades by certain
26 defendants.

1 3. LEGAL ISSUES

2 The claims at issue are described above and in the amended consolidated complaint.
3 Defendants deny the allegations of wrongdoing and have filed motions for dismissal.
4 Defendants' motions for dismissal, along with Lead Plaintiff's opposition brief, and defendants'
5 replies are presently before the Court. The parties' briefs further detail the principal legal issues
6 in dispute.

7 4. MOTIONS

8 On December 14, 2006, the Southern District of New York consolidated the action and
9 appointed the Teachers' Retirement System of Oklahoma as Lead Plaintiff. On May 23, 2007,
10 the Southern District of New York granted defendants' motion to transfer the action to this
11 Court.

12 Presently pending before the Court are defendants' motions for dismissal pursuant to Fed.
13 R. Civ. P. 12(b)(6). Defendants filed their motions for dismissal on August 13, 2007. Lead
14 Plaintiff filed its opposition papers on September 17, 2007. Lead Plaintiff filed a notice of
15 supplemental authority on October 1, 2007. Defendants filed their reply papers in further
16 support of the motion on October 4, 2007. A hearing on the motions for dismissal is scheduled
17 for October 19, 2007, prior to the Court's scheduled Case Management Conference.

18 This action is governed by the Private Securities Litigation Reform Act ("PSLRA"), a
19 provision of which revised the Securities Exchange Act to provide "all discovery and other
20 proceedings shall be stayed during the pendency of any motion to dismiss" 15 U.S.C. §
21 78u-4(b)(3)(B). There are no pending discovery motions.

22 5. AMENDMENT OF PLEADINGS

23 The parties do not anticipate the addition of any new parties or claims at this time but
24 reserve their rights to make such amendments. In light of the pending motions for dismissal and
25 the PSLRA stay of all discovery and proceedings, the parties cannot presently propose a realistic
26 deadline for amending the pleadings. With the exception of defendant Zak, defendants have not
27 filed an answer in this action as they have moved for dismissal and those motions are still
28

1 pending. Defendant Zak, who is acting *pro se*, filed an answer listing defenses and also moved
2 to dismiss the amended consolidated complaint.

3 6. EVIDENCE PRESERVATION

4 During the meet and confer process, the parties have represented that they have taken all
5 appropriate steps to preserve evidence relevant to the issues reasonably evident in this action.

6 7. DISCLOSURES

7 Due to the stay of all discovery and other proceedings imposed by the PSLRA, no initial
8 disclosures have been made pursuant to Federal Rule of Civil Procedure 26.

9 **Lead Plaintiff's Proposal:**

10 As set forth below in § 8, Lead Plaintiff proposes that counsel for the parties meet within
11 10 days of the ruling on the motion to dismiss to agree upon a schedule for initial disclosures.

12 **Defendants' Proposal:**

13 Because this action is subject to the stay of all discovery and other proceedings imposed
14 by the PSLRA, initial disclosures are premature at this time. The scope of the issues may be
15 significantly affected by the Court's ruling on defendants' motion to dismiss. If those motions
16 are dispositive, then there will be no need for initial disclosures. However, even if not
17 completely dispositive, the Court's ruling may dramatically limit or narrow the issues in this
18 case, thereby significantly affecting the substance of the initial disclosures.

19 As set forth below, defendants propose that, if this case survives a motion to dismiss (i.e.,
20 the motion is not granted in whole or in part), the parties meet and confer to discuss a schedule
21 for initial disclosures and that a case management conference be held thirty days after the final
22 ruling on the motions to dismiss.

23 8. DISCOVERY

24 This action is presently subject to the stay of all discovery and other proceedings imposed
25 by the PSLRA. The parties' respective positions regarding discovery are set forth below.

26 **Lead Plaintiff's Proposal:**

27 Lead Plaintiff proposes that the parties meet and confer within 10 days of the Court's
28 ruling on defendants' motions for dismissal, at which time the parties will engage in further

1 discussions concerning the disclosures required by Rule 26(a)(1), any modifications to limits on
2 the number of interrogatories and depositions and development of a discovery plan with regard
3 to, among other things, discovery of electronically stored information (“ESI”). To enable
4 discovery to proceed efficiently and to enable the parties to propound discovery that is properly
5 tailored, Lead Plaintiff proposes that during this meet-and-confer session each party be prepared
6 to discuss, among other things: (i) the type, kind, location, and amount of any potentially
7 relevant ESI (including ESI concerning, among other things, the Company’s accounting entries
8 during the Class Period and Velac testing data); (ii) how the party maintained potentially relevant
9 ESI during the Class Period; (iii) how the party maintains potentially relevant ESI presently; (iv)
10 any relationships with a third party that contracts to and/or otherwise maintains the party’s
11 potentially relevant ESI; (v) email retention policies and back-up and archiving programs
12 (including the rotation, archiving and/or destruction of back-up tapes and/or systems recovery
13 routines); (vi) persons responsible for maintaining computer hardware, data or information
14 systems that contain potentially relevant ESI (presently and during the Class Period); (vii)
15 identification of all operating systems used during the relevant Class Period and presently by
16 persons with knowledge of facts relevant to this action; (viii) the most efficient and effective
17 means of producing that party’s ESI (*i.e.*, native format or otherwise); (ix) the steps taken by the
18 party to preserve ESI, including meta-data, and store that ESI pending production; (x) who
19 specifically the party directed to preserve documents, including ESI; and (xi) whether and how
20 old hardware and/or legacy systems that may have potentially relevant ESI, if any, have been
21 stored to preserve documents.

22 Lead Plaintiff further proposes that each defendant be prepared to produce, within 21
23 days of a decision by the Court denying that defendant’s motion for dismissal, all documents
24 already gathered and produced by that defendant to any governmental entity or regulatory body
25 concerning any of the matters set forth in the amended consolidated complaint.

26 Lead Plaintiff disputes defendants’ contention (*see infra* Defendants’ Proposal, § 8) that
27 Lead Plaintiff “did not own Connetic’s shares when the alleged fraud relating to Velac was
28 revealed” because it assumes there was only one disclosure concerning the Velac fraud rather

1 than multiple partial disclosures. Lead Plaintiff does not believe that defendants' proposed
2 bifurcated discovery schedule "focused on threshold issues relating to standing and class
3 certification" would be an efficient means of conducting discovery. Further, Lead Plaintiff
4 opposes defendants' contention that "class certification should be resolved before substantial
5 merits discovery is undertaken" (*see infra* Defendants' Proposal §17) because this will
6 substantially and unnecessarily delay commencement of facts discovery.

7 **Defendants' Proposal:**

8 Defendants believe that the PSLRA's stay of all discovery and other proceedings applies
9 to any discussions regarding discovery and renders such discussions premature at this time.
10 Accordingly, pursuant to the PSLRA, it is inappropriate to address the scope or timing of
11 discovery at this juncture.

12 Further, the scope and timing of discovery may be significantly affected by the Court's
13 ruling on defendants' motions to dismiss. If those motions are dispositive, then there will be no
14 need for discovery. However, even if not completely dispositive, the Court's ruling may
15 dramatically limit or narrow the issues in this case, thereby significantly affecting the scope and
16 timing of discovery. In addition, defendants believe that there are significant issues regarding
17 Lead Plaintiff's standing and class certification. For example, Lead Plaintiff did not own
18 Connetics shares when the alleged fraud relating to Velac was revealed. Accordingly,
19 defendants believe that any discovery should initially be focused on threshold issues relating to
20 standing and class certification. In addition, plaintiff's proposal that defendants produce all
21 documents provided to any governmental entity within 21 days of a ruling on a motion to dismiss
22 contravenes the Federal Rules of Civil Procedure. Finally, a protective order covering the
23 discovery of any confidential materials will be required before such materials are disclosed.

24 In light of the above, defendants propose that, if this case survives a motion to dismiss,
25 the parties meet and confer to discuss appropriate discovery proceedings and a case management
26 conference be held thirty days after a final ruling on the motions to dismiss.
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1 9. CLASS ACTIONS

2 Lead Plaintiff alleges that this action should be certified as a class action and will file a
3 motion for class certification pursuant to Federal Rule of Civil Procedure 23. Defendants intend
4 to seek discovery on class issues and to oppose any such motion for class certification.

5 10. RELATED CASES

6 **Lead Plaintiff states:**

7 While Lead Plaintiff is unaware of any pending cases that are “related” within the
8 meaning of Civil Local Rule 3-12(a), *United States Securities and Exchange Commission v.*
9 *Alexander J. Yaroshinsky and Victor E. Zak*, No. 06CV2401 (RCC) (S.D.N.Y.), is presently
10 pending in the Southern District of New York (the “SEC Action”).

11 **Defendants state:**

12 There are no related cases. On November 20, 2006, while this case was pending in the
13 Southern District of New York, Judge Casey ruled that *United States Securities and Exchange*
14 *Commission v. Alexander J. Yaroshinsky and Victor E. Zak*, No. 06CV2401 (RCC) (S.D.N.Y.)
15 was not a related.

16 11. RELIEF

17 Lead Plaintiff seeks monetary damages, as set forth in the amended consolidated
18 complaint.

19 **Lead Plaintiff states:**

20 The amount of damages, if any, sustained by the proposed class will be the subject of
21 expert testimony. *See, e.g., In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 459
22 (S.D.N.Y. 2004) (“Proof of damages in securities cases is always difficult and invariably
23 requires expert testimony”); *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D.
24 Fla. 1988) (“In a securities fraud case, expert testimony is needed to fix the amount of
25 damages.”), *aff’d without op.*, 899 F.2d 21 (11th Cir. 1990). The parties will exchange expert
26 reports after resolution of the pending motions to dismiss at a date to be determined by the Court.
27
28

Defendants state:

Lead Plaintiff must provide its damage calculations as part of its initial disclosures under Rule 26, not as part of expert discovery.

12. SETTLEMENT AND ADR

This Court's Case Management Conference Order (Dkt. #13-2) did not assign this case to the ADR Multi-Option Program, and the parties believe that this case is not currently assigned to this program. The parties further agree that assignment to the ADR Multi-Option Program is inappropriate in this complex litigation case. The parties are experienced in, and familiar with, private mediation and agree to remain in communication.

13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES

The parties do **not** consent to having a magistrate judge conduct all further proceedings.

14. OTHER REFERENCES

The parties agree the case is **not** suitable for reference to a binding arbitration, a special master or the Judicial Panel on Multidistrict Litigation.

15. NARROWING OF ISSUES

In light of the pending motions for dismissal, the parties have not presently agreed to narrow the issues before the Court through stipulated facts or requests to bifurcate claims, defenses or issues.

16. EXPEDITED SCHEDULE

The parties agree this is **not** the type of case that can be handled on an expedited basis with streamlined procedures.

Lead Plaintiff states:

Lead Plaintiff believes the development of a plan for orderly conduct of pretrial and trial proceedings, including early scheduling, will promote a just, speedy and inexpensive resolution.

Defendants state:

Defendants agree that, if this case survives a motion to dismiss, development of a plan for orderly conduct of pretrial and trial proceedings is appropriate. Defendants note that because

this action is subject to the stay of all discovery and other proceedings imposed by the PSLRA, discussion of a schedule is premature at this time.

17. **SCHEDULING**

This action is presently subject to the stay of all discovery and other proceedings imposed by the PSLRA. In light of the automatic stay imposed by the PSLRA and the pendency of defendants' motions to dismiss, the parties have been unable to agree to a proposed schedule for this action. The parties' respective positions regarding scheduling are set forth below.

Lead Plaintiff's Proposal:

Lead Plaintiff proposes the following schedule, which estimates are made in good faith based on the current procedural status of the case:

ACTION	DUE DATE
Meet and Confer re: disclosures required by Rule 26(a)(1) and exchange of information regarding ESI	10 days after any ruling on Motions for Dismissal
All Defendants Answer	20 days after denial of a defendant's Motion for Dismissal
Defendant produces documents provided to governmental entities concerning any of the matters set forth in the amended consolidated complaint.	21 days after denial of that defendant's Motion for Dismissal
Class Certification	Motion: 60 days after all defendants serve Answers Opposition: 45 days after Motion filed Reply: 30 days after Opposition filed
Each Side Identifies Areas of Expert Testimony and Experts	8 months from date of last filed Answer
Identification of Rebuttal Experts	9 months from date of last filed Answer
Fact Discovery Cut-Off	10 months from date of last filed Answer
Expert Reports Exchanged	30 days after Fact Discovery Cut-Off
Rebuttal Expert Reports Exchanged	30 days after exchange of Expert Reports
Expert Discovery Cut-Off	30 days after exchange of Rebuttal Reports
Dispositive Motions	Motion: 30 days after Expert Discovery Cut-Off Opposition: 60 days after Motions filed Reply: 30 days after Oppositions filed

1	Pre-trial Conference	2 weeks prior to trial
2	Trial	30 days after hearing on Dispositive Motions, or
3		upon resolution of Dispositive Motions

4 Lead Plaintiff disagrees with defendants' contention that damages calculations must be
5 provided as part of its initial disclosures under Rule 26. As set forth by Lead Plaintiff in § 11
6 above, damages in securities class actions are normally the subject of expert testimony.

7 **Defendants' Proposal:**

8 As discussed above, defendants believe that the PSLRA's stay of all discovery and other
9 proceedings applies to any discussions regarding discovery and renders such discussions
10 premature at this time. Accordingly, pursuant to the PSLRA, it is inappropriate to address the
11 scope or timing of discovery at this juncture. Moreover, the scope and timing of discovery may
12 be significantly affected by the Court's ruling on defendants' motions to dismiss.

13 In any event, the schedule proposed by Lead Plaintiff is one-sided and unworkable. Even
14 assuming that the amended consolidated complaint survived the motions to dismiss, given the
15 nature of the claims and the extensive class period (covering two-and-a-half years), defendants
16 anticipate that it will take significantly longer than ten months to complete discovery in this case.
17 Moreover, defendants believe that discovery should begin by addressing the threshold issues of
18 class certification and Lead Plaintiff's standing to pursue the claims in this case, and that Lead
19 Plaintiff's unfiled motion for class certification should be resolved before substantial merits
20 discovery is undertaken. Discovery regarding standing is particularly relevant because Lead
21 Plaintiff did not own Connetics shares when the alleged fraud relating to Velac was revealed. In
22 addition, defendants believe that Lead Plaintiff must provide its damage calculations as part of
23 its initial disclosures under Rule 26, not as part of expert discovery. Finally, a protective order
24 covering the discovery of any confidential materials will be required before such materials are
25 disclosed.

26 In light of the above, defendants propose that, if this case survives a motion to dismiss,
27 the parties meet and confer to discuss appropriate discovery proceedings and a case management
28 conference be held thirty days after a final ruling on the motions to dismiss.

18. TRIAL

Lead Plaintiff has requested a trial by jury.

Lead Plaintiff states:

Lead Plaintiff estimates in good faith that trial may exceed two weeks and potentially be as long as six weeks.

Defendants state:

Because the scope of any claims to be tried is unknown at this time, it is not possible to provide a meaningful estimate of trial time. In the event all allegations in the amended consolidated complaint were tried, the defendants' good-faith estimate is that any trial would exceed four weeks and potentially be as long as eight weeks.

19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

Lead Plaintiff, defendants Connetics, Thomas G. Wiggans, Gregory Vontz, John Higgins, and Lincoln Krochmal, and defendant Alexander J. Yaroshinsky have filed the Certification of Interested Entities or Persons required by Civil Local Rule 3-16. Defendant Zak states that he intends to file the Certification of Interested Entities or Persons shortly.

Lead Plaintiff states, pursuant to Civil L.R. 3-16, there is no such interest to report.

Defendant Alexander J. Yaroshinsky states, pursuant to Civil L.R. 3-16, that his spouse, Sophie Yaroshinsky, has a direct, pecuniary interest in the outcome of this case.

Defendants Connetics, Thomas G. Wiggans, Gregory Vontz, John Higgins, and Lincoln Krochmal state, pursuant to Civil L. R. 3-16, that Connetics is a wholly-owned subsidiary of Stiefel Laboratories.

Dated: October 10, 2007

Respectfully submitted,

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/s/ David R. Stickney
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Dated: October 10, 2007

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Dated: October 10, 2007

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CERTIFICATE OF SERVICE

I, Kaye A. Martin, do hereby certify that on this 10th day of October, 2007, true and correct copies of the foregoing

Joint Case Management Statement;
Lead Plaintiff's [Proposed] Case Management Order; and
Defendants' [Proposed] Case Management Order

were filed electronically. Those attorneys who are registered with the Electronic Case Filing ("ECF") System may access this filing through the Court's system, and notice of this filing will be sent to the parties by operation of the Court's ECF System. Attorneys not registered with the Court's ECF system will be duly and properly served via facsimile and/or Federal Express (as indicated on the attached Service List), in accordance with the Federal Rules of Civil Procedure and the Court's Local Rules.

I further declare that, pursuant to Civil L.R. 23-2, on this date I served copies of the above documents on the Securities Class Action Clearinghouse by electronic mail through the following electronic mail address provided by the Securities Class Action Clearinghouse:

jcarlos@law.stanford.edu

/s/ Kaye A. Martin

Kaye A. Martin

Service List

In re CONNETICS SECURITIES LITIGATION

Case No.: 07-02940

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